

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN W. DOERSCHLAG,

Plaintiff,

vs.

MATT PHILLIPS, et al.,

Defendants.

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4:04cv590

MEMORANDUM AND ORDER

This case is before the court on the following pending matters: (1) filing nos. 29 and 31, the plaintiff's Motions to Compel Production of Documents filed by John W. Doerschlag; (2) filing no. 30, the defendants' Objection to Plaintiff's Document Requests filed by Matt Phillips, et al.; and (3) filing no. 34, the defendants' Motion to Stay Discovery or, in the alternative to Set Progression Dates. This action was brought without counsel by a prisoner in a state or local corrections facility and is therefore exempt from initial disclosure requirements and any obligation to meet and confer and prepare a planning conference report. See Fed. R. Civ. P. 26(a)(1)(E)(iii) & 26(f).

The defendants admit that the plaintiff has served discovery requests on them, but they contend that they will, or may, file a motion based on qualified immunity at some time in the future. They have generally alleged immunity from suit in their Answer to the complaint, but they did not assert that defense in their Motion to Dismiss (filing no. 22). It is true that "[q]ualified immunity is 'an entitlement not to stand trial or face the other burdens of litigation.'" Saucier v. Katz, 533 U.S. 194, 200 (2001), *quoting* Mitchell v. Forsyth, 472 U.S. 511, 516 (1985). However, no such motion is presently pending, and the progression of this case cannot be stalled indefinitely merely because the defendants generally allege an affirmative defense in their Answer.

The plaintiff's document requests appear reasonable, and the defendants' objections are inconsistent with the federal discovery rules. Therefore, discovery will not be stayed, and the defendants shall properly and responsibly respond to the plaintiff's discovery requests by no later than April 18, 2006. Filing no. 34 is granted in part, however, in that

Magistrate Judge F. A. Gossett will enter an Order Setting Schedule for Progression of this Case.

IT IS THEREFORE ORDERED:

1. That filing nos. 29 and 31, the plaintiff's Motions to Compel Production of Documents, are granted;
2. That filing no. 30, the defendants' Objection to Plaintiff's Document Requests, is denied; and
3. That filing no. 34, the defendants' Motion to Stay Discovery or, in the alternative to Set Progression Dates, is granted in part and denied in part, as follows: Discovery is not stayed, but Magistrate Judge F. A. Gossett will enter an Order Setting Schedule for Progression of this Case; in the meantime, the defendants shall properly and responsibly respond to the plaintiff's discovery requests by no later than April 18, 2006.

March 29, 2006.

BY THE COURT:

/s Richard G. Kopf
United States District Judge